

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 809 CS Assault or Battery on Homeless Persons
SPONSOR(S): Taylor and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Sneed</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u>11 Y, 0 N, w/CS</u>	<u>Kramer</u>	<u>De La Paz</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor must be reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or advanced age of the victim. This is commonly known as the "hate crime" statute. HB 809, referred to as the "Norris Act", amends this statute to include offenses evidencing prejudice based on the homeless status of the victim.

The bill also creates a new section of statute which requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault or aggravated battery upon a homeless person. The bill also authorizes the judge to impose a fine of up to \$10,000 and to order the defendant to perform up to 500 hours of community service. The bill provides that adjudication of guilt or imposition of sentence may not be suspended, deferred or withheld.

The Criminal Justice Impact Conference met on March 21, 2006 and determined that this bill would have an indeterminate, but minimal, fiscal impact on the prison bed population in the Department of Corrections.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: HB 809 will have the effect of increasing the maximum sentence which may be imposed for certain offenses committed against a homeless person.

Provide limited government: The bill increases the maximum sanction for offenses committed against a homeless person where the offense evidenced prejudice and will require the imposition of minimum mandatory sentences in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Background

Hate Crime Statute: Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor must be reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or advanced age of the victim. This is commonly referred to as a “hate crime” statute. Offenses are reclassified as follows:

- A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- A misdemeanor of the first degree is reclassified to a felony of the third degree.
- A felony of the third degree is reclassified to a felony of the second degree.
- A felony of the second degree is reclassified to a felony of the first degree.

There is currently no section of statute that specifically applies to criminal offenses committed against a homeless person.

Effect of HB 809

HB 809 provides that the act may be cited as the “Norris Act”.

HB 809 amends section 775.085, F.S., the “hate crime” statute, to reclassify the felony or misdemeanor degree of a criminal offense if the commission of the offense evidences prejudice based on the *homeless status* of the victim.

The bill also creates a new section of statute which requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault¹ or aggravated battery² upon a homeless person. The bill authorizes the judge to impose a fine of up to \$10,000 and to order the defendant to perform up to 500 hours of community service.³ The bill provides that adjudication of guilt or imposition of sentence may not be suspended, deferred or withheld.

¹ An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.

² An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045, F.S.

³ This provision is similar to section 784.08, F.S. which requires the imposition of a three year minimum mandatory sentence for an aggravated assault or aggravated battery committed on a victim age 65 or older. There are a number of other sections of statute that reclassify assault or battery offenses if they are committed against specified types of victims. Section 784.07(2), F.S. reclassifies assault and battery offenses committed against a list of people such as law enforcement officers, firefighters, emergency medical care

The bill defines the term "homeless" in conformity with s. 420.621, F.S. which contains the following definition:

"Homeless" refers to an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is:

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

C. SECTION DIRECTORY:

Section 1. Amends s. 775.085, F.S., to include a definition for "homeless status"

Section 2. Creates s. 784.0815, F.S. relating to aggravated assault or aggravated battery on homeless persons.

Section 2. Provides effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference met on March 21, 2006 and determined that this bill would have an indeterminate, but minimal, fiscal impact on the Department of Corrections prison bed population. Although it is estimated that there are approximately 68,000 to 75,000 homeless persons in the state, the number of reported cases of assault or battery offenses committed on homeless persons has been minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

providers and public transit employees and requires the imposition of a three year minimum mandatory sentence for aggravated assault of a law enforcement officer and a five year minimum mandatory sentence for aggravated battery of a law enforcement officer. See also, ss. 784.074, 784.081, 784.082, 784.083, F.S.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 24, 2006, the Criminal Justice Appropriations Committee adopted an amendment by Representative Taylor, the bill sponsor, which amended the hate crime statute to include offenses committed against homeless victims and created a new section of statute which reclassified assault or battery offenses against a homeless person and provided a three year minimum mandatory sentence. The amendment also names the act the "Norris Act".

On April 10, 2006, the Justice Council adopted a strike-all amendment which removed the provision adopted in the Criminal Justice Appropriations Committee that provided for the reclassification of assault or battery offenses committed on a homeless person. The amendment retained the provision expanding the hate crime statute to apply to offenses evidencing prejudice based on the homeless status of the victim and retained the three year minimum mandatory sentence for aggravated battery or aggravated assault on a homeless victim.